

**COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 03-MSRC-001**

**COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS**

COMPLAINANT

v.

DAVID GIST, ALFRED GIBSON, et al

RESPONDENTS

**FINAL ORDER REGARDING
RESPONDENT DAVID GIST**

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent David Gist, and the members of the Commission having reviewed the Settlement Agreement filed on April 1, 2003 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Respondent, David Gist's Underground Mine Foreman's Certificate, # A-***-**, issued by the Commonwealth of Kentucky, shall be **SUSPENDED** for a period of one (1) year, effective March 30, 2003;
3. Respondent Gist shall be required to re-take and pass the underground mine foreman's examination given by the KDMM before the suspension will be lifted and said underground mine foreman's certificate will be returned to him. The suspension of said certificate shall continue indefinitely, until Respondent Gist passes the underground mine foreman's

examination;

4. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference and attached hereto;

5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent Gist, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13); and

6. This Final Order represents a final disposition of all issues between the Complainant, KDMM, and the Respondent, David Gist, in this matter. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission. Pursuant to KRS 351.194(8), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of an order.

Entered this _____ day of May 2003.

BAYARD V. COLLIER, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER REGARDING RESPONDENT DAVID GIST was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this _____ day of May 2003:

DAVID GIST

GIRDLER KY *****

And by regular mail, postage pre-paid to:

ALFRED GIBSON

BEAR BRANCH KY *****

And by messenger mail to:

COMMISSIONER FRANK DELZER
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

HON. TONY OPPEGARD
GENERAL COUNSEL
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

And the original shall be kept on file:

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT KY 40601

DIANE SCHULER FLEMING
GENERAL COUNSEL
MINE SAFETY REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

KENTUCKY DEPT. OF MINES & MINERALS)
)
Complainant)
)
v.) Administrative Action No. 03-MSRC-001
)
DAVID GIST, ALFRED GIBSON, ROLAND)
DAUGHERTY, FREDDIE JONES &)
CHARLES MOORE)
)
Respondents)

SETTLEMENT AGREEMENT BETWEEN KDMM & DAVID GIST

Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”; “the Department”) and Respondent David Gist (“Gist”), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the dismissal of this action against him and the cancellation of the hearing scheduled for May 8, 2003, Gist hereby admits violating KRS 352.201 (1) and agrees to the **SUSPENSION OF HIS UNDERGROUND MINE FOREMAN’S CERTIFICATE (# A-***-**)** **FOR A PERIOD OF ONE (1) YEAR**, effective upon the signing of this Settlement Agreement by both parties.

In addition, Gist must re-take and pass the underground mine foreman’s examination given by the Department before the suspension of his underground mine foreman’s certificate will be lifted and his foreman’s certificate reinstated. That is, the suspension period regarding

Gist's underground mine foreman's certificate will continue indefinitely until Gist passes said examination.

Gist further agrees that this Settlement Agreement, and any final order issued herein by the Mine Safety Review Commission ("the Commission"), will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission - regarding a separate alleged offense - will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

The parties state that they have carefully read and considered this Settlement Agreement prior to signing the Agreement, and that they understand and agree to its terms and provisions. KDMM and Gist acknowledge that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

DAVID GIST

Girdler, Kentucky *****

FRANK X. DELZER, Commissioner
Kentucky Dept. of Mines & Minerals
P.O. Box 2244
Frankfort, Kentucky 40602

DATE

DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement was mailed this _____ day of March, 2003, to: David Gist, *****, Girdler, Kentucky *****; Alfred Gibson, *****, Bear Branch, Kentucky *****; Roland Daugherty, *****, Williamsburg, Kentucky *****; Freddie Jones, *****, Williamsburg, Kentucky *****; and Charles Moore, *****, Williamsburg, Kentucky *****.

TONY OPPEGARD
General Counsel

KENTUCKY DEPT. OF MINES & MINERALS